



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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FINAL MINUTES FOR SPECIAL MEETING Held at 11:45 a.m. on Wednesday, February 7, 2007 9535 E. Doubletree Ranch Road • Scottsdale, Arizona 85258

Board Members

Robert P. Goldfarb, M.D., F.A.C.S., Chair
William R. Martin III, M.D., Vice Chair
Douglas D. Lee, M.D., Secretary
Patrick N. Connell, M.D.
Patricia Griffen
Becky Jordan
Ram R. Krishna, M.D.
Lorraine L. Mackstaller, M.D.
Sharon B. Megdal, Ph.D.
Dona Pardo, Ph.D., R.N.
Paul M. Petelin Sr., M.D.
Amy Schneider, M.D.

CALL TO ORDER

The meeting was called to Order at

ROLL CALL

The following Board Members were present: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Patricia R.J. Griffen, Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Lorraine Mackstaller, M.D., William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Paul M. Petelin, Sr. and Amy Schneider, M.D.

CALL TO THE PUBLIC

No one was present to speak during the call to the public.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	RESOLUTION
1.	MD-07-0024A	L.Y. MICHAEL A. MARMER, M.D.	28174	Re-issue the Interim Order for evaluation at SRI to be completed within 14 days.

Robert Milligan was present on behalf of Dr. Marmer.

Robert P. Goldfarb, M.D., FACS, Patrick N. Connell, M.D. and William R. Martin, III, M.D. noted they each have a professional relationship with Mr. Milligan, but that would not affect their ability to adjudicate the case.

Erica Bouton, Senior Medical Investigator summarized the case for the Board. She stated the Board received a statutory report from a physician stating one of her patients alleged Dr. Marmer inappropriately touched him on several occasions. Board Staff contacted the patient and his account of the incidents mirrored the statutory report. Board Staff also interviewed Dr. Marmer and he denied any inappropriate touching. Based on the information obtained during the investigation and Dr. Marmer's interview the Chief Medical Consultant recommended Dr. Marmer undergo an evaluation at Sexual Recovery Institute (SRI). The Board's Executive Director issued a Confidential Investigative Interim Order for evaluation at SRI. Dr. Marmer called Board Staff stating that he was scheduled to attend the evaluation on February 5, 2007. On February 2, 2007 Staff received correspondence from SRI stating that Dr. Marmer canceled his evaluation and that he had no intention of rescheduling.

Mr. Milligan stated the patient in this case had a long history of schizophrenia as well as other things and his history raises questions of his credibility. Dr. Marmer denies the allegations in this case and has an unblemished record with the Board. He is objecting to presenting for an evaluation at SRI because the facility's website and promotional materials presume guilt by stating the program is designed for physicians who have crossed boundaries. The SRI professional assessment program materials did not include statements that it evaluated physicians first to determine if they have a problem. Instead, Dr. Marmer chose to go to a facility in Atlanta for an assessment that includes

a polygraph examination. The reports from this facility will be sent directly to the Board. Mr. Milligan stated that Dr. Marmer realizes that not complying with a Board Order is serious.

Robert P. Goldfarb, M.D., FACS stated that the Board asked the physician to have a psychosexual evaluation, but there is no presumption of guilt or sustained violations. Dr. Goldfarb asked if SRI was only approved evaluation/treatment center Board Staff offered. Timothy C. Miller, J.D., Executive Director said SRI was currently the only Board approved facility for psychosexual issues. Mr. Miller clarified that the Board has received reports from SRI in the past with no recommendations for treatment. Robert P. Goldfarb, M.D. stated Board Staff could have recommended alternatives to the doctor. Mr. Miller stated there was no opportunity for Board Staff to investigate alternate facilities to determine if they were equipped to deal with professionals.

Douglas D. Lee, M.D. stated that in the past when physicians requested alternate facilities/programs the Board has denied those requests. Robert P. Goldfarb, M.D. noted Michel Sucher, M.D., Board Addictionologist had suggested more than one facility and that could have been offered to the doctor.

Ram R. Krishna, M.D. asked why Staff determined psychosexual evaluation was necessary. Mark Nanney, M.D., Chief Medical Consultant stated that Board Staff does not elect to send every physician for an evaluation after receiving a complaint of a sexual nature. The decision to order an evaluation is made after Staff interviews the complainant and the physician and determines further investigation is needed. Dr. Nanney noted his concern that if Board Staff based a decision to dismiss a complaint based on the complainant's mental status or competency it would allow this segment of the population to be preyed upon by unscrupulous physicians.

Sharon B. Megdal, Ph.D. stated she felt the Board was caught in a technicality that could have been avoided. She stated Board Staff could have called an emergency meeting with the Board to discuss other treatment options.

MOTION: Ram R. Krishna, M.D. moved to go into Executive Session.

SECONDED: Patrick N. Connell, M.D.

The Board went into Executive Session for legal advice at 12:56 p.m.

The Board returned to Open Session at 1:04 p.m.

No deliberations or decisions were made during Executive Session.

Ram R. Krishna, M.D. stated he respect's Dr. Nanney's opinion because he interviewed the physician and the complainant and recommended evaluation. Alternatively, Dr. Marmer's request for an alternative evaluation center is valid. However, the Executive Director has looked into facilities and chose the best center and the Board should go by the Board Order to send him to SRI. Dr. Krishna would favor a summary restriction.

Sharon B. Megdal, Ph.D. stated SRI has been used numerous times by the Board and several times they have received reports that a physician does not have a problem. This refutes Mr. Milligan's allegation that SRI presumes guilt.

Dr. Nanney stated that after interviewing the participants he did not feel Dr. Marmer was a danger to the public. The only thing he recommended was that further investigation should be done. Timothy Miller, J.D., Executive Director stated there are two problems with physicians choosing their own evaluations and treatment facilities: 1) They may chose a facility that is not certified and 2) When there is a Board Order for a specific facility, the facility knows what the Board's concerns are and can determine whether the physician is safe to practice. Christine Cassetta, Board Legal Advisor stated that when the Board orders a physician to a facility, all of the Board's investigative materials are forwarded to the facility. If the physician chooses his own evaluator, that facility will not receive the pertinent Board documents needed to evaluate the physician for the Board's purposes. Ms. Cassetta also reminded the Board that Board Staff issues confidential investigative orders for these types of evaluations and by doing so the agency protects the interest of the physician during the investigative process.

William R. Martin, III, M.D. stated he would like to extend the length of time to comply with Order for SRI evaluation.

MOTION: William R. Martin, III, M.D. moved to decline to take a summary action and instruct the Executive Director re-issue the Interim Order for evaluation at SRI to be completed within 14 days.

SECONDED: Ram R. Krishna, M.D.

Mr. Milligan waived notice to any procedural issues with re-issuing the Interim Order.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Patricia R.J. Griffen, Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Lorraine Mackstaller, M.D., William R. Martin, III, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D, R.N., Paul M. Petelin, Sr. and M.D. Amy Schneider, M.D.

VOTE: 12-yay, 0-nay, 0-abstain, 0-recuse, 0-absent

MOTION PASSED.

The meeting adjourned at 1:20p.m.



A handwritten signature in black ink, appearing to read "T. C. Miller".

Timothy C. Miller, J.D., Executive Director